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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/640,557	08/13/2003	Marc M. Matter	03-270	8348
23653	7590	10/18/2005	EXAMINER	
FRANK G MORKUNAS 7750 DAGGET ST SUITE 203 SAN DIEGO, CA 92111			FOX, CHARLES A	
			ART UNIT	PAPER NUMBER
			3652	

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/640,557

Applicant(s)

MATTER, MARC M.

Examiner

Charles A. Fox

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>20030813</u> . | 6) <input type="checkbox"/> Other: ____. |

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 18 is dependent upon itself, which does not appear to be the applicants intention. It appears the claim should be dependent upon claim 17 based upon a reading of the specification. The claim will be treated on the merits as being dependent upon claim 17, but it will still be rejected under 35 U.S.C. 112, as the scope of the claim as it is currently written is indeterminate.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Garvey.

Regarding claim 1 Garvey US 4,049,083 discloses a hand truck comprising:

a frame (24) having a plurality of wheels (12) attached;

an electrically powered lift member(34) attached to said frame;

said frame having a pair of vertical side members (26);

each of said side members having a means to maintain said lift member in a level orientation as the lift member moves up and down.

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Regarding claim 2 Garvey further discloses :

said lift member having a first planer member oriented in a horizontal plane and a second planer member oriented perpendicular to said first planer member;

said level maintaining means further comprise:

a guide track on the interior of said vertical side members;

a roller assembly (50) for movement in each guide track;

wherein each roller assembly is connected to the second planer member.

Regarding claim 3 Garvey also discloses that each roller assembly has a pair of rollers for movement in each respective guide track. See figure 1.

Regarding claim 4 Garvey further discloses that each roller assembly is connected to said second planer member via a right angle members (37) and a third planer member (38) extending between said vertical side member (26).

Claims 1,10 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Rhodes. Rhodes US 3,907,138 discloses a hand truck comprising:

a frame having a plurality of wheels (50) attached;

an electrically powered lift member(94) attached to said frame;

said frame having a pair of vertical side members (12);

each of said side members having a means to maintain said lift member in a level orientation as the lift member moves up and down;

lower structural members (44) attached to said frame, wherein said wheels are attached to said lower structural members;

handles (24) connected to said frame.

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Claims 1 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Holmes. Holmes US 6,309,168 discloses a hand truck comprising:

- a frame having a plurality of wheels attached;
- an electrically powered lift member(40) attached to said frame;
- said frame having a pair of vertical side members (20);
- each of said side members having a means to maintain said lift member in a level orientation as the lift member moves up and down;
- a reversible electric motor (34) attached to said frame;
- a cable spool attached to said motor (not numbered);
- a cable (36) connected to said spool and said lift member for causing movement of said lift member as cable is wound onto and off of said spool.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rhodes as applied to claim 1 above, and further in view of Gillette et al. Rhodes teaches the limitations of claim 1 as above, he does not teach the lifting member as having forks. Gillette et al. US 6,557,869 teaches a hand truck with fork members (35) making up the lifting portion of the device. It would have been obvious to one of ordinary skill in the art,

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at the time of invention to provide the device taught by Rhodes with forks as taught by Gillette et al. in order to allow the device to lift cargo that is loaded onto a pallet.

Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rhodes as applied to claim 1 above, and further in view of Berthiaume et al. Rhodes teaches the limitations of claim 1 as above, he does not teach using a net on his hand truck. Berthiaume et al. US 6,302,414 teaches a hand truck with a net (81) being fastened to a plurality of location on the truck to secure a load thereto. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Rhodes with a net and associated means for holding the net as taught by Berthiaume et al. in order to provide stability to a load placed upon the lift member.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Holmes as applied to claim 17 above, and further in view of Paterson et al. Holmes teaches the limitations of claim 17 as above, he does not teach a gear reducer between the motor and the spool. Paterson et al. US 5,803,437 teaches a winch comprising :

- a mounting housing (20);

- an electric motor(14);

- a cable spool (18);

- a reduction gearing assembly (28) operable connected between said motor and said cable spool. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Holmes with a reduction gear assembly as taught by Paterson et al. in order to allow a smaller motor to lift a larger load.

Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Magoffin in view of Garvey '083. Magoffin US 795,147 teaches a hand truck comprising:

- a U-shaped frame (14,21);

- a lift member (24) for upwards and downwards movement relative to said frame;

- means (33,37) for maintaining said lift member in a substantially horizontal orientation as it is moved up and down;

- a pair of rotatable screw members (16) attached to said frame;

- said lift member having means (22,23) for engaging said screws so as to move said lift member upwards and downwards when said screws are turned;

- at least one drive (54) for raising and lowering said lifting member by rotating said screws via a spur gear (51). Magoffin does not teach the hand truck as having a motor to drive the lifting device. Garvey '083 teaches a lifting device for a hand truck that is driven by an electric motor. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Magoffin with an electric motor as taught by Garvey '083 in order to make it easier for an operator to raise the load from a ground level.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Magoffin and Garvey '083 as applied to claim 19 above, and further in view of Davis et al. Magoffin and Garvey '083 teach the limitations of claim 19 as above, they do not teach the device as having two motors. Davis et al. US 6,848,675 teaches an electrical hoist drive system comprising :

a pair of drive motors (310,320);
said motors connected to a gear box with spur gears (342,352);
wherein said spur gears move transmission members (344,354) to raise and lower a load. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by over Magoffin and Garvey '083 with redundant motors as taught by Davis et al. in order to lift a platform uniformly without the need for a separate brake while maintaining a high degree of accuracy in the positioning of the lift member.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Magoffin and Garvey '083 as applied to claim 19 above, and further in view of Gillette et al. Magoffin and Garvey '083 teach the limitations of claim 19 as above, they do not teach the lifting member as having forks. Gillette et al. US 6,557,869 teaches a hand truck with fork members (35) making up the lifting portion of the device. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Magoffin and Garvey '083 with forks as taught by Gillette et al. in order to allow the device to lift cargo that is loaded onto a pallet.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Magoffin and Garvey '083 as applied to claim 19 above, and further in view of Audet Magoffin and Garvey '083 teach the limitations of claim 19 as above, they do not teach the hand truck as having 4 wheels. Audet US 5,938,396 teaches a hand truck with two main wheels (20) and two auxiliary wheels (26) mounted to the main frame of the truck. It would have been obvious to one of ordinary skill in the art, at the time of invention to

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provide the device taught by Magoffin and Garvey '083 with auxiliary wheels as taught by Audet in order to increase the stability of the hand truck as it is being used.

Claims 1,5,8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Magoffin in view of Davis et al. Magoffin teaches a hand truck comprising:

- a frame (14,21) with a plurality of wheels;

- a lift member (24) for upwards and downwards movement relative to said frame;

- means (33,37) for maintaining said lift member in a substantially horizontal orientation as it is moved up and down;

- a pair of rotatable screw members (16) attached to said frame;

- wherein said screw members are supported by bearings mounted on said frame;

- said lift member having means (22,23) for engaging said screws so as to move said lift member upwards and downwards when said screws are turned;

at least one drive (54) for raising and lowering said lifting member by rotating said screws via a spur gear (51). Magoffin does not teach the device as having two motors. Davis et al. teaches an electrical hoist drive system comprising :

- a pair of drive motors (310,320);

- said motors connected to a gear box with spur gears (342,352);

- said motors supported on a frame member (not numbered) that is connected to two vertical side frame members (not numbered), (see figure 3);

- wherein said spur gears move transmission members (344,354) to raise and lower a load. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by over Magoffin with two motors as taught by

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Davis et al. in order to lift a platform uniformly without the need for a separate brake while maintaining a high degree of accuracy in the positioning of the lift member.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Magoffin and Davis et al. as applied to claim 5 above, and further in view of Bross. Magoffin and Davis et al. teach the limitations of claim 5 as above they do not teach a sprocket and chain assembly for driving the screws. Bross US 3,768,628 teaches a lift assembly comprising:

- a plurality of screws (90);

- a spur gear (62) at one end of each screw

- a driven motor with a spur gear (56) on an output shaft;

- a transmission means (58) for turning the screws in a synchronized manner;

said transmission means comprising a chain with links. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Magoffin and Davis et al. with the chain drive as taught by Bross to drive the screws without the need for elaborate gear and linkage assemblies, thereby lowering the manufacturing costs of the device.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rhodes as applied to claim 10 above, and further in view of Wagner et al. Rhodes teaches the limitations of claim 10 as above, he does not teach the hand truck as having a plurality of wheels on each bracket. Wagner et al. US 5,406,996 teaches a hand truck (10) comprising :

- a vertical frame structure (12,16);

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a lift device (36) mounted on said frame structure;
a lower horizontal frame structure (20,22);
said lower frame structure having a pair of wheels (24,26) mounted on each side;
wherein a smaller wheel (26) is mounted in front of a larger wheel (24). It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Rhodes with a second pair of wheels as taught by Wagner et al. in order to enable movement of the device without needing to tip the lift device from a horizontal orientation.

The prior art made of record and not relied upon, but considered pertinent to applicant's disclosure is: Jenkins 1952, Sharp 1973, Standbridge et al. 1976, McPeak et al. 1986, Nelson 1986 and Rosen 1997.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Fox whose telephone number is 571-272-6923. The examiner can normally be reached between 7:00-4:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached at 571-272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Charles A. Fox 10-14-05
Charles A. Fox
Examiner
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